

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DANIEL KLEEGERG, LISA STEIN, and AUDREY  
HAYS,

Plaintiffs,

v.

LESTER EBER; ALEXBAY, LLC f/k/a LESTER  
EBER, LLC; ESTATE OF ELLIOTT W. GUMAER,  
JR.; and WENDY EBER,

Defendants,

and

EBER BROS. & CO., INC.; EBER BROS. WINE AND  
LIQUOR CORP.; EBER BROS. WINE & LIQUOR  
METRO, INC.; EBER-CONNECTICUT, LLC; EBER-  
RHODE ISLAND, LLC; EBER BROS. ACQUISITION  
CORP.; EBER-METRO, LLC; SLOCUM & SONS OF  
MAINE, INC.; CANANDAIGUA NATIONAL BANK  
& TRUST COMPANY,

Nominal Defendants.

Civil Action No.:  
16-CV-9517(LAK)(KHP)

**STIPULATION AND ORDER  
TO SUBSTITUTE PARTY**

|                              |
|------------------------------|
| <b>USDC SDNY</b>             |
| <b>DOCUMENT</b>              |
| <b>ELECTRONICALLY FILED</b>  |
| <b>DOC #:</b> _____          |
| <b>DATE FILED:</b> 10/1/2020 |

**WHEREAS**, plaintiffs commenced the above captioned action on December 9, 2016 in which they named Lester Eber as a defendant;

**WHEREAS**, Defendant the Estate of Elliott W. Gumaer, Jr. has filed a cross-claim against Lester Eber;

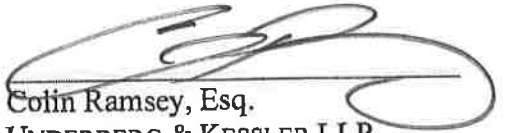
**WHEREAS**, on April 5, 2020, Defendant Lester Eber died;

**WHEREAS**, on September 24, 2020, Defendant Wendy Eber was appointed the Executrix of the Estate; and

**WHEREAS**, the Estate of Lester Eber has engaged Underberg & Kessler LLP as counsel for the Estate as evidenced by the Declaration of Colin Ramsey attached hereto as **Exhibit A**;


It is now, hereby, **STIPULATED, AGREED and ORDERED** that the Estate of Lester Eber should be substituted as a defendant in the above captioned action.

Dated: September 30, 2020



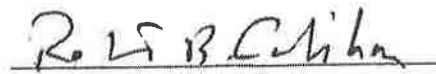
Colin Ramsey, Esq.  
UNDERBERG & KESSLER LLP  
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*Estate of Lester Eber*  
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Dated: September 25, 2020



Brian C. Brook (BB 1980)  
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Dated: September \_\_, 2020



Robert C. Calihan, Esq.  
CALIHAN LAW PLLC  
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*Estate of Elliot W. Gumaer, Jr.*  
16 E. Main Street, Suite 620  
Rochester, New York 14614  
Telephone: (585) 232-5291  
Email: rcalihan@calihanlaw.com

Dated: Sept 29, 2020

**SO ORDERED:**

Honorable Lewis A. Kaplan  
United States District Judge



Honorable Katherine H. Parker  
United States Magistrate Judge

Dated: 10/1/2020

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DANIEL KLEEGERG, LISA STEIN and AUDREY HAYS,  
Plaintiffs,

v.

LESTER EBER, ALEXBAY, LLC f/k/a LESTER EBER, LLC,  
ESTATE OF ELLIOTT W. GUMAER, JR. and WENDY EBER,

Defendants,

and

EBER BROS. & CO, INC., EBER BROS. WINE AND LIQUOR  
CORP., EBER BROS. WINE & LIQUOR METRO, INC., EBER-  
CONNECTICUT, LLC, EBER-RHODE ISLAND, LLC, EBER BROS.  
ACQUISITION CORP., EBER-METRO, LLC, SLOCUM & SONS  
OF MAINE, INC., and CANANDAIGUA NATIONAL BANK &  
TRUST COMPANY,

Nominal Defendants.

Civil Action No.  
16-CV-9517(LAK/KHP)

**DECLARATION OF COLIN D. RAMSEY, ESQ.**

1. I, Colin D. Ramsey, am an attorney licensed to practice in the State of New York and in this Court.

2. I submit this Declaration in support of the Stipulation to substitute the Estate of Lester Eber as a defendant in this litigation.

3. Lester Eber, deceased, was a named defendant in this action in his individual capacity.

4. On April 4, 2020, Lester Eber passed away from complications relating to COVID-19.

5. Under Fed.R.Civ.P. 25(a)(1), "If a party dies and the claim is not extinguished, the court may order substitution of the proper party."

6. On September 24, 2020 Wendy Eber was issued Letters Testamentary by the Monroe County Surrogate's Court, permitting her to serve as Executrix of Lester Eber's Estate.

7. Accordingly, the Estate of Lester Eber may now be substituted as a defendant in place of Lester Eber.

8. Ms. Eber has elected to retain Underberg & Kessler LLP to represent the Estate of Lester Eber and Alexbay.

9. Counsel for plaintiffs and for co-defendant, Estate of Elliott W. Gumaer, Jr., have agreed to stipulate to the substitution of the Estate of Lester Eber.

WHEREFORE, for each and all of the foregoing reasons, Wendy Eber requests that an order of substitution be entered substituting the Estate of Lester Eber as a party defendant in lieu of original defendant Lester Eber, deceased.

DATED: October 1, 2020  
Buffalo, New York

UNDERBERG & KESSLER LLP

By: 

Colin D. Ramsey, Esq., Of Counsel  
*Attorneys for Eber Defendants*  
50 Fountain Plaza  
Suite 320  
Buffalo, New York 14202  
(716) 847.9103

**CERTIFICATE OF SERVICE**

I hereby certify that on October 1, 2020, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

Donald O'Brien, Esq.  
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Brian Brook, Esq.  
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Rochester, New York 14614

A handwritten signature in black ink, appearing to read "Colin D. Ramsey", is written over a horizontal line.

Colin D. Ramsey, Esq., Of Counsel  
Underberg & Kessler LLP  
*Attorneys for Eber Defendants*  
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(716) 847.9103